



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

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MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Daniel J. Bryant  
Assistant Attorney General

*Carl P. Thorsen / O.A.A.G.  
for D.J.B.*

SUBJECT: Weekly Report for August 6, 2001- August 10, 2001

THE WEEK AHEAD

The Senate is in Recess until September 4.

The House is in Recess until September 5.

- **Wen Ho Lee:** Current estimates are that the Bellows Report on the investigation into and draft FISA application concerning Dr. Wen Ho Lee will be ready for public release around August 13. A declassified version was provided to the Senate Judiciary Committee and Senate and House Intelligence Committees on July 12. The Report is currently undergoing review by the Office of Information and Privacy to redact privacy and other material withholdable under the Freedom of Information Act. When that review is complete, the public versions will be provided to these committees and may be released by the Department to the public. (Walter)
- **FY 2002 Intelligence Authorization Legislation:** The Senate Intelligence Committee is finalizing its annual intelligence authorization bill and is scheduled to mark it up on September 6. The Department is working with the Committee on substantive provisions that are being considered, which will likely include changes to the Foreign Intelligence Surveillance Act and the Title III wiretap law and a provision to broaden criminal sanctions for leaks of classified information. A meeting with an interagency group, organized by Office of Intelligence Policy and Review and attended by representatives from DOJ, DoD, NSA, CIA, and FBI, was held on July 26 to discuss possible Administration revisions to current FISA law. (Walter)
- **Immigration - Money Laundering:** The House International Relations Committee has requested a briefing by Customs, State, INS, DEA and FBI on proposals to expand authority to deny visas to persons engaged in money laundering. OLA is coordinating the briefing, which is scheduled for September 25, 2001. (Estrada)

- **NextWave:** OLA is working with the Federal Communications Commission (FCC) staff to notify members of Congress of our decision to support the FCC's appeal of the NextWave case to the Supreme Court. The issue in the case is whether or not the automatic cancellation of NextWave's spectrum license, due to failure to make timely payments as required by the license, was proper. The DC Circuit held that it was not; the Department is likely to petition for a writ of certiorari on September 22. (Wilson)

### THIS WEEK<sup>3</sup>

- **Immigration Practitioner Fraud:** On August 6, INS and OLA briefed Senator Schumer's office on a partnership between INS and the Immigration Practitioner Fraud Task Force in Los Angeles (consisting of representatives from law enforcement and non-governmental organizations), which will work to highlight and prosecute illegal representation on immigration matters. (D. Burton)
- **Bankruptcy Reform (H.R. 333):** On July 31, the House named conferees to this legislation, paving the way for Members to begin resolving differences when Congress returns from its August recess. It is expected that some staff-level negotiations may begin during the recess. (Wilson)
- **Mark Middleton:** This week, the Department will respond to a House Government Reform Committee request for White House Credit Union records relating to Mark Middleton, depending upon guidance from the Criminal Division about whether the provision of such records is prohibited by Rule 6(e) of the Federal Rules of Criminal Procedure and the Right to Financial Privacy Act. (F. Burton)
- **Roger Clinton:** On August 6, 2001, the Department provided records to the House Government Reform Committee in response to its request for records relating to investigations of Roger Clinton from January 20, 1993 to January 20, 2001. The search for responsive documents continues; additional documents may be produced at a later time. On July 27, the Committee staff interviewed a former Parole Commission employee about Mr. Clinton's contacts with the Commission regarding inmate Rosario Gambino and, on August 3, they requested an interview with Commissioner Gaines, which is likely to occur on August 7. OLA staff will participate. (F. Burton)
- **FBI Oversight:** The Senate Judiciary Committee has requested redacted copies of documents, which were previously made available for review by Committee staff, relating to oversight of the FBI and, particularly, management practices regarding whistleblowers. At this point, the Committee is most interested in the recommendations and decisions in the Justice Management Division (JMD) about disciplinary actions regarding FBI employees involved in the incident at Ruby Ridge and the ensuing internal investigations. OLA staff have been working with JMD representatives to redact the identities of the

individuals named in several JMD documents, which are expected to be produced to the Committee this week. (F. Burton)

- **DEA Agent Discipline:** Last week, House Government Reform Committee staff requested information about the disciplinary action the DEA intended to take with regard to [REDACTED], who the Inspector General (IG) had investigated [REDACTED]. The IG, concluded that some of [REDACTED] statements were inaccurate and referred them to the Criminal Division and the DEA for further action. The Criminal Division declined prosecution and, on August 3, OLA staff advised Committee staff that DEA considered disciplinary action but [REDACTED] retired before any final decisions were made. This week, OLA staff will respond to the staff request for consultation regarding their proposal to disclose publicly the redacted version of the IG report. (F. Burton)

FOIA EXEMPTION (b)(7)

#### LAST WEEK

- **National Instant Check System:** On July 26, the Senate Judiciary Subcommittee on Administrative Oversight and the Courts asked the FBI for records from the past 3 years about the maintenance of records relating to firearm purchases beyond a 1 day period. OLA staff are conferring with FBI representatives about this request. (Estrada)
- **Victim's Rights Amendment:** On July 30, Department representatives from OLA, the Solicitor General's Office, Office of Legal Policy, and Office of Legal Counsel conducted a conference call with Senators Kyl and Feinstein's staff to discuss the possible amendment. (Coughlin)
- **Supreme Court Decision:** On July 30, staff from the Office of the Deputy Attorney General, INS, and OLA briefed the House Immigration Subcommittee majority staff on implementation of the Supreme Court's decision in *Zadvydas v. Davis*, which directs the INS to release any persons in detention for whom there is no likelihood that a removal order will be affected within a reasonable time. (D. Burton)
- **National Domestic Preparedness Office:** On July 30, the House Judiciary Subcommittee on Crime requested documents relating to discussions and any decision to eliminate or move the National Domestic Preparedness Office (NDPO) from the Department to the Federal Emergency Management Administration. While a search for responsive documents is underway, OLA staff conversations with Subcommittee staff on August 6, suggest that the Subcommittee's needs could be satisfied through a meeting. The Subcommittee is concerned about the proposed NDPO move, which they believe is scheduled to occur on August 24, and particularly that they were not previously consulted about this matter. (F. Burton)

- **Nominations:** On July 31, the Senate confirmed the nomination of James Ziglar to be Commissioner of INS by a voice vote; and on August 1, the Senate confirmed the nomination of Asa Hutchinson to be Administrator of DEA by a vote of 98-1. On August 2, the Senate confirmed the nomination of Robert Mueller to be Director of the FBI, the nomination of Sara Hart to be Director of the National Institute of Justice, and the nomination of William Riley to be a United States Circuit Judge for the Eighth Circuit all by votes of 98-0. On August 3, the Senate confirmed the nomination of Robert McCallum to be Assistant Attorney General of the Civil Division and Lynn Leibovitz to be a judge on the D.C. Superior Court by unanimous consent.

Senator Schumer held over the nomination of Deborah Daniels, to be Assistant Attorney General for the Office of Justice Programs, at the Senate Judiciary Committee business meeting on August 2.

The following nominations were sent to the Senate on July 31: John W. Suthers, to be United States Attorney for the District of Colorado; Anna Mills S. Wagoner, to be United States Attorney for the Middle District of North Carolina; Thomas E. Moss, to be United States Attorney for the District of Idaho; William Walter Mercer, to be United States Attorney for the District of Montana; Michael G. Heavican, to be United States Attorney for the District of Nebraska; Todd Peterson Graves, to be United States Attorney for the Western District of Missouri; John L. Brownlee, to be United States Attorney for the Western District of Virginia; and Paul K. Charlton, to be United States Attorney for the District of Arizona. Additionally, on July 31, the following individuals were nominated to be Commissioners of the United States Parole Commission: Gilbert G. Gallegos, Cranston J. Mitchell, Marie F. Ragghianti, and Edward F. Reilly.

On August 1, the following United States Attorney nominations were sent to the Senate: J. Strom Thurmond, Jr., to be United States Attorney for the District of South Carolina; Michael W. Mosman, to be United States Attorney for the District of Oregon; Paul J. McNulty, to be United States Attorney for the Eastern District of Virginia; Robert Garner McCampbell, to be United States Attorney for the Western District of Oklahoma; Harry Sandlin Mattice, Jr., to be United States Attorney for the Eastern District of Tennessee; and Timothy Mark Burgess, to be United States Attorney for the District of Alaska. Additionally, the nominations of Charles F. Lettow and Marian Blank Horn, both to be judges of the United States Court of Federal Claims, were sent to the Senate.

On August 2, the following nominations were sent to the Senate: Terrence L. O'Brien, to be a United States Circuit Judge for the Tenth Circuit; Jeffrey R. Howard, to be a United States Circuit Judge for the First Circuit; M. Christina Armijo, to be a United States District Judge for the District of New Mexico; Karon O. Bowdre, to be a United States District Judge for the Northern District of Alabama; David L. Bunning, to be a United States District Judge for the Eastern District of Kentucky; Karen K. Caldwell, to be a United States District Judge for the Eastern District of Kentucky; Claire V. Eagan, to be a United States District Judge for the Northern District of Oklahoma; Kurt D. Engelhardt,

to be a United States District Judge for the Eastern District of Louisiana; Stephen P. Friot, to be a United States District Judge for the Western District of Oklahoma; Callie V. Granade, to be a United States District Judge for the Southern District of Alabama; Joe L. Heaton, to be a United States District Judge for the Western District of Oklahoma; Larry R. Hicks, to be a United States District Judge for the District of Nevada; William P. Johnson, to be a United States District Judge for the District of New Mexico; James H. Payne, to be a United States District Judge for the Northern, Eastern, and Western Districts of Oklahoma; Danny C. Reeves, to be a United States District Judge for the Eastern District of Kentucky; and Lawrence J. Block, to be a Judge of the United States Court of Federal Claims. Additionally, the following U.S. Attorney nominations were sent to the Senate: Roscoe C. Howard, Jr., District of Columbia; David C. Iglesias, District of New Mexico; Matthew H. Mead, District of Wyoming; Michael J. Sullivan, District of Massachusetts; Drew H. Wrigley, District of North Dakota; Colm F. Connolly, District of Delaware; Susan W. Brooks, Southern District of Indiana; Leura G. Canary, Middle District of Alabama; Thomas C. Gean, Western District of Arkansas; Raymond W. Gruender, Eastern District of Missouri; Joseph S. Van Bokkelen, Northern District of Indiana; Charles W. Larson, Sr., Northern District of Iowa.

On August 3, the following U.S. Attorney nominations were sent to the Senate: Margaret M. Chiara, Western District of Michigan; Robert J. Conrad, Jr., Western District of North Carolina; James M. Greenlee, Northern District of Mississippi; Terrell L. Harris, Western District of Tennessee; Stephen B. Pence, Western District of Kentucky; Gregory F. Van Tatenhove, Eastern District of Kentucky; Thomas B. Helffinger, District of Minnesota; and Patrick L. Meehan, Eastern District of Pennsylvania.

Additionally, on August 3, Jay S. Bybee was nominated to be Assistant Attorney General for the Office of Legal Counsel.

Under Rule 31, paragraph 6. of the Standing Rules of the Senate, the Senate did not agree to hold all nominations in the status quo notwithstanding the adjournment of the Senate; therefore, all nominations were returned to the White House and will have to be renominated once the Senate returns in September. (Scott-Finan)

- **Two Strikes and You're Out Child Protection Act of 2001 (H.R. 2146):** On July 31, the House Judiciary Subcommittee on Crime held a hearing on this legislation, which would provide for life imprisonment on a second conviction for certain sexual offenses against children, and markup was held on August 2. The Department generally supports this bill, but is requesting some modifications. At the request of the bill's sponsors, we have not yet sent a views letter. (Owen)
- **Authorization Extension Of The Drug-Free Communities Support Program (H.R. 2291):** On July 31, the House passed this legislation, which the Department generally supports despite concerns that insufficient funds have been made available for grant administration. (Owen)

- **Human Cloning Prohibition Act of 2001 (H.R. 2505):** On July 31, the House passed this legislation, which would amend title 18, United States Code, to make it a federal criminal offense to clone or to attempt to clone a human being. Civil penalties could also be imposed against violators. Late last week, the Office of Management and Budget released a Statement of Administration Policy on the legislation, which stated the Administration's support for the bill. (Coughlin)
- **Racial Profiling:** The Senate Judiciary Constitution Subcommittee held a hearing on racial profiling on August 1. The Department was not invited to testify. (Scott-Finan)
- **Migrant Smuggling and Trafficking Center:** On August 1, the Department met with Senate and House Commerce, State, Justice Appropriations Subcommittee staff to alert them to the proposed establishment of the Center. The proposal is currently under review at OMB. (Daley)
- **Product Packaging:** On August 1, the Criminal Division's Deputy Assistant Attorney General Alice Fisher testified before the Senate Judiciary Subcommittee on Antitrust, Business Rights and Competition regarding recently introduced legislation to prevent and punish the placement of hate-filled leaflets or notices in unopened consumer goods. (Coughlin)
- **Identity Theft:** On August 1, the OLA participated in a briefing with the Criminal Division, the Office of the Deputy Attorney General, and other agencies for the National Economic Council on efforts to combat identity theft.

The House Financial Services Committee has asked for the Department's assistance on putting together a hearing on a particular means of identity theft involving death notices. They would like the Department's cooperation in producing, as a witness, a person recently convicted in the Southern District of New York for such a crime, as well as an Administration witness. They currently hope to hold the hearing in September. (Owen)

- **Japanese POW Claims Legislation (H.R. 1198):** On August 1, OLA and a Civil Division attorney accompanied the State Department to a briefing for a bipartisan group of congressional staff on the Administration's opposition to H.R. 1198. The bill, titled "Justice for United States Prisoners of War Act of 2001," forbids U.S. courts from construing sections of the 1951 Treaty of Peace with Japan as constituting a waiver of claims by US serviceman against Japanese companies, among other things. While strongly supporting the sentiment of the legislation, the Administration opposes it. (Wilson)
- **Criminalizing Leaks of Classified Information:** CIA and FBI representatives conducted a briefing for Members of the Senate Intelligence Committee on damage

caused by leaks to the media of classified information on August 1. An open hearing on this issue is scheduled for September 5; as you discussed in a phone conversation with Senator Shelby on August 3, the Deputy Attorney General will testify at the hearing on behalf of the Department. Director of Central Intelligence George Tenet has also been invited to appear; representatives from media and civil liberties groups are expected to appear on a separate panel. (Walter)

- **Mexico Migration:** On August 1, the Deputy Attorney General attended a meeting with Senators Gramm, Kyl and Domenici to hear their concerns and ideas regarding development of a temporary worker program. The White House DPC and NSC also attended.

On August 2, staff from Justice and State met with Senator Ensign's office to discuss these issues, and a similar meeting is scheduled with Senator Dewine's office for August 8. (D. Burton)

- **Voting System Changes (S. 565):** On August 2, the Senate Rules and Administration Committee approved legislation that would authorize \$3.5 billion in spending toward election system reform, such as upgrades in voting machines and provisional ballots for those not on registered voter lists, require the mailing of sample ballots and instructions ten days before the election, and establish an oversight commission on elections. The Department has not been asked to comment on this legislation. (Scott-Finan)
- **The U.S. Population and Immigration:** On August 2, the House Judiciary Immigration Subcommittee held a hearing on the latest census figures and how immigration has affected the U.S. population figures. No Department witness was requested. (D. Burton)
- ***Brown v. Board* Commemorative Legislation (S. 1046):** On August 2, the Senate Judiciary Committee approved legislation which would create a Commission to commemorate the anniversary of the *Brown v. Board of Education* decision, after adopting an amendment providing that the Department of Justice would be part of the Commission, and then substituted the Senate language in the House bill. Since the House had already approved the House measure, the amended House companion measure (H.R. 2133) must now be approved by the House. (Scott-Finan)
- **Border Safety:** On August 2, staff from INS and OLA met with Rep. Flake's office to discuss immigration enforcement and safety issues at the southwest border. A similar meeting will be held with staff from House Immigration Subcommittee on August 6th. (D. Burton)
- **DOJ Reauthorization (S. 1319, H.R. 2215):** Senators Leahy and Hatch introduced a DOJ Reauthorization bill during the week of July 30. The bill is similar to the House-passed version of the bill, H.R. 2215. We anticipate that we will brief the Judiciary

Committee this week, regarding our views on the bill. The Department has previously issued a views letter on the House Judiciary version of the bill, which passed the House in modified form. (Owen)

- **Immigration Issues briefing:** Senator Dewine's office requested a briefing on several high-profile immigration matters including, long-term detention and unaccompanied alien minors. INS held the briefing on August 3. (D. Burton)
- **Title III Wiretaps and FISA:** A joint Senate Judiciary and Senate Intelligence staff briefing on policies and practices regarding dual use of Title III wiretaps and Foreign Intelligence Surveillance Act (FISA) surveillance on the same target took place on August 3. Both staffs are interested in revising current law to allow broader sharing of wiretap and FISA information between law enforcement and the intelligence community; provisions revising FISA are likely to be inserted in the FY 2002 Intelligence Authorization Bill. (Walter)
- **Deliberative Documents:** House Government Reform Committee staff have reiterated their expectation that the Chairman will soon send a strong letter, insisting that the Department produce the memorandum from the former Chief of the Campaign Financing Task Force, Robert Conrad, to the former Attorney General, conveying Mr. Conrad's advice about whether she should seek the appointment of a statutory Independent Counsel relating to then Vice President Gore. The Committee also may issue a subpoena to the Attorney General to appear at a hearing on this issue. The White House Counsel's Office is expected to provide guidance about the most appropriate response in the event of a subpoena. (F. Burton)